LIM KIT SIANG

v.

DATO' SERI DR. MAHATHIR MOHAMAD

SUPREME COURT, KUALA LUMPUR
SALLEH ABAS LP
ABDUL HAMID OMAR CJ (MALAYA)
EUSOFFE ABDOOLCADER SCJ
[CIVIL APPEAL NO. 469 OF 1986]
11 DECEMBER 1986

CIVIL PROCEDURE: *Contempt of Court - Appeal against refusal of leave by the High Court to apply for an order of committal against the respondent - Role of judiciary - Impugned remarks - Whether they ex necessitate connote an attack on the judiciary as suggested by appellant - Whether leave should be given to apply for committal proceedings for contempt of Court.*

This is an appeal against the refusal of leave by the High Court to apply for an order of committal against the respondent. The judgment of Harun J was reported at [1986] CLJ (Rep) 462.

Held:

[1] Government comprises three branches, namely, the legislature, the executive and the judiciary. The Courts have a constitutional function to perform and they are the guardian of the Constitution within the terms and structure of the Constitution itself; they not only have the power of construction and interpretation of legislation but also the power of judicial review - a concept which does not imply the superiority of Judges over legislators but of the Constitution over both.

[2] The Courts are the final arbiter between the individual and the State and between individuals *inter se*, and in performing their constitutional role they must be the ultimate bulwark against unconstitutional legislation or excesses in administrative action.

[3] There is no call to be overly hypersensitive and to overact impetuously as the impugned remarks do not *ex necessitate* connote, within the requisite of the strictest burden of proof for proceedings for contempt, an attack on the judiciary in the way suggested by the appellant but rather tend to ventilate, perhaps understandably, the vexation of the executive in not being able to get through some desired objective or end without curial intervention.

[4] The impugned remarks appear to be an articulation of the executive's frustration in not being able to achieve its objects in matters where the intervention of the Courts has been sought to some avail, and the way the position is expressed, perhaps somewhat injudiciously in that it may not inconceivably well be open to misconstruction, does not amount to an attack on the Courts as to constitute a contempt, but only stems, in their Lordships' view, from a misconception of the role of the Courts.

[5] This was not a case where leave should be given to apply for committal proceedings for contempt of Court.

[Appeal dismissed.]

For the appellant - Karpal Singh (Oh Choong Ghee with him); M/s. Karpal Singh & Co.

For the respondent - Y.B. Tan Sri Abu Talib bin Othman, Attorney-General (T. Selventhiranathan, SFC with him)

JUDGMENT

Salleh Abas LP:

In this appeal against the refusal of leave by the High Court to apply for an order of committal against Dato' Seri Dr. Mahathir Mohamad, we have carefully considered the passage attributed to him appearing at p. 18 in the TIME magazine of the issue of 24 November 1986, and would say that viewed objectively and dispassionately and in proper perspective the excerpt complained of appears to be an articulation of the executive's frustration in not being able to achieve its objects in matters where the intervention of the Courts has been sought to some avail, and the way the position is expressed, perhaps somewhat injudiciously in that it may not inconceivably well be open to misconstruction, does not amount to an attack on the Courts as to constitute a contempt, but only stems, in our view, from a misconception of the role of the Courts.

When we speak of government it must be remembered that this comprises three branches, namely, the legislature, executive and the judiciary. The Courts have a constitutional function to perform and they are the guardian of the constitution within the terms and structure of the constitution itself; they not only have the power of construction and interpretation of legislation but also the power of judicial review - a concept that pumps through the arteries of every constitutional adjudication and which does not imply the superiority of Judges over legislators but of the constitution over both. The Courts are the final arbiter between the individual and the State and between individuals *inter se,* and in performing their constitutional role they must of necessity and strictly in accordance with the constitution and the law be the ultimate bulwark against unconstitutional legislation or excesses in administrative action. If that role of the judiciary is appreciated then it will be seen that the Courts have a duty to perform in accordance with the oath taken by Judges to uphold the constitution and act within the provisions of and in accordance with the law.

We trust that any misunderstanding as to the role of the Courts will accordingly be dispelled, and in this context and against the background of what we have just said, there is no call to be overly hypersensitive and to overact impetuously as the impugned remarks do not *ex necessitate* connote, with in the requisite of the strictest burden of proof for proceedings for contempt, an attack on the judiciary in the way suggested by the applicant but rather tend to ventilate, perhaps understandably, the vexation of the executive in not being able to get through some desired objective or end without curial intervention.

In the circumstances we have adumbrated we are of the view that this is not a case where leave should be given to apply for committal proceedings for contempt of Court, and we accordingly dismiss this appeal.

Also found at [1987] 1 CLJ 40